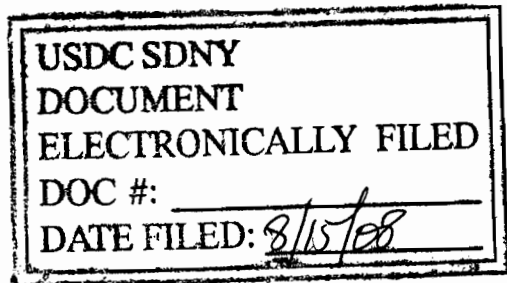


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
MILTON GARBUTT, :

Petitioner, :

-against- : ORDER

JAMES T. CONWAY, Superintendent, Attica :  
Correctional Facility, :

Respondent. :  
-----X

SIDNEY H. STEIN, U.S. District Judge.

In a Report and Recommendation dated September 11, 2006, Magistrate Judge James C. Francis recommended that this petition for a writ of *habeas corpus* be denied. After a *de novo* review of Magistrate Judge Francis' Report and Recommendation dated September 11, 2006, petitioner's objections dated September 20, 2006, and petitioner's "Affidavit in Support of Addendum and Memorandum of Law, Requesting to Expand Upon Original Objections to the Magistrate's Report" dated May 23, 2008,

IT IS HEREBY ORDERED that:

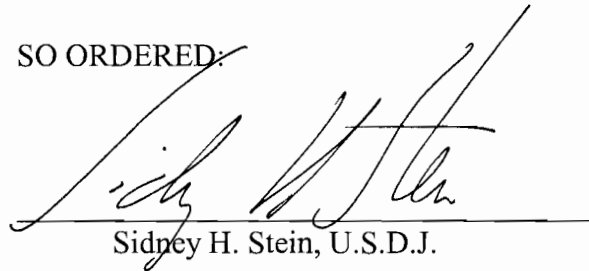
1. Magistrate Judge Francis' "Report and Recommendation" is adopted;
2. The petition pursuant to 28 U.S.C. § 2254 is dismissed;
3. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253 (as amended by the AEDPA); Middleton v. Attorneys Gen. of New York and Pennsylvania, 396 F.3d 207

(2d Cir. 2005) (per curiam); Lucidore v. New York State Div. of Parole, 209 F.3d 107, 111-13 (2d Cir. 2000); Soto v. United States, 185 F.3d 48, 51-53 (2d Cir. 1997); United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997), cert. denied, 525 U.S. 953 (1998); and

4. Pursuant to 28 U.S.C. § 1915(a) the Court certifies that any appeal from this Order would not be taken in good faith.

Dated: New York, New York  
August 15, 2008

SO ORDERED:

A handwritten signature in black ink, appearing to read "Sidney H. Stein", is written over a horizontal line. The signature is stylized and cursive.

Sidney H. Stein, U.S.D.J.